

REMARKS

Applicant has carefully reviewed and considered the Office Action mailed on October 2, 2003, and the references cited therewith. Claims 37 and 38 are new. Support for claims 37 and 38 can be found in the specification at page 14, lines 18-32 and page 15, lines 1-7. Thus, claims 2-31 and 33-38 are now pending in this application. No new subject matter has been added.

§102 Rejection of the Claims

Claims 2-8, 12, 14-29-36 were rejected under 35 USC § 102(b) as allegedly being anticipated by Jackson *et al.* (U.S. Patent No. 4,741,944). The Examiner asserts that the claims are inherently disclosed in the '944 patent substantially as set forth in the previous office action. This rejection is respectfully traversed.

The Examiner admits that Jackson *et al.* do not explicitly disclose the claim limitations CD tensile strength of the elastic composite, cup crush to density ratio and cup crush values. Thus, he has presumed that said limitations are inherent in the '944 patent.

A single reference may anticipate without disclosing a feature of the claimed invention if that characteristic is necessarily present, or inherent, in the single anticipating reference. *Schering Corp. v. Geneva Pharm., Inc.*, 339 F.3d 1373 (Fed. Cir. 2003). A critical question for inherent anticipation which must be determined is whether, as a matter of fact, practicing the invention disclosed in the anticipating reference necessarily featured or resulted in the limitation of the claimed invention. *Toro Co. v. Deere & Co.*, 355 F.3d 1313 (Fed. Cir. 2004). In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic is necessarily present in the teachings of the reference. MPEP § 2112

The Examiner's presumption of inherency is based on the disclosure of similar materials and similar production steps. The Examiner then relies on deductive reasoning to lead to the conclusion of inherency. Applicant respectfully requests that the Examiner reconsider the Declaration under 37 C.F.R. §1.132, by Applicant, Scott R. Lange, enclosed with the RCE filed on August 4, 2003. It is respectfully submitted that Applicant's burden to prove the absence of inherency has been satisfied by this declaration for the reasons provided below.

The declaration reports that a representative composite elastic material prepared according to the Jackson *et al.* disclosure was tested. According to the test results the Jackson material prepared had a density of 0.035 g/cm^3 , a basis weight of 72 g/M^2 and a cup crush of 186.5 g per cm. Therefore, the cup crush to density ratio of the Jackson material was 5328.6 cm^2 . Thus, the Jackson *et al.* disclosure do not meet the limitations of claims 2 or 3.

The Examiner alleges that an analysis of the properties at the tested basis weight of the 72 g/m^2 is not commensurate with the scope of the Jackson *et al.* disclosure, showing an article basis weight of $50\text{-}90 \text{ g/m}^2$. Applicant respectfully submits that a person of ordinary skill in the art would recognize the significance of the difference in basis weight and cup crush value between the Jackson *et al.* material and the claimed invention because the high cup crush of the Jackson *et al.* material does not provide the cloth-like feel characteristics of the claimed invention (see specification at page 6, lines 17-24). In addition, the person having ordinary skill in the art would recognize that an increase in basis weight, *e.g.*, to 90 g/m^2 , would result in an increase in stiffness and cup crush of the material, thereby reducing the softness. Therefore, analyzing material prepared according to Jackson *et al.* at a basis weight above 72 g/m^2 , the person having ordinary skill in the art would realize that the material prepared according to Jackson having a basis weight above 72 g/m^2 would still not meet the limitations of the instant claims.

Furthermore, a person having ordinary skill in the art would recognize that a 20% reduction in the basis weight of the samples prepared according to Jackson, *e.g.*, to 50 g/m^2 , would not yield the 25% reduction in cup crush required to be within the scope of the pending claims. Support for this is demonstrated from the data for Sample 2 and Sample 3, in Table 2. (See specification at page 39.) In Table 2, the data show that an approximately 5% reduction in basis weight from 86 g/m^2 to 82 g/m^2 results in approximately a 5% reduction in cup crush. In an analogous comparison of the material prepared and tested according to Jackson *et al.*, one skilled in the art would predict that a 20% reduction in basis weight would yield a 20% reduction in cup crush. A 20% reduction in basis weight would reduce the cup crush value of the Jackson material to 149 g per cm. This is still well outside the scope of the pending claims. Applying the same logic one would expect about a 28% reduction in the cup crush/density ratio of a sample prepared according to Jackson *et al.* with a 20% reduction in basis weight. This would be

expected to provide a cup crush/density ratio of 3836.5. This is still more than twice the upper limit of claim 3. Thus, it is respectfully submitted that the Jackson material would not necessarily possess the characteristics of the claimed invention.

Presuming that the Examiner has met his burden of proof by deductive reasoning, Applicant has rebutted this finding with evidence that the cup crush, cup crush to density ratio and basis weight for the elastic material disclosed in Jackson *et al.* are different from the claimed ranges of the present invention. The declaration clearly shows that the cup crush values for the Jackson material do not necessarily meet the limitations of the claims 2 or 3. Furthermore, it is submitted that one skilled in the art would not expect that the material disclosed in Jackson *et al.* could meet the limitations in the instant claims. Applicant respectfully submits that the Examiner has failed to make the requisite showing of inherent anticipation because the Examiner did not present any direct evidence that the features of the claimed invention are necessarily present in Jackson *et al.*

It is respectfully submitted that Applicant has satisfied his burden to show an unobvious difference between the claimed invention and the Jackson *et al.* disclosure (as required by MPEP §2112). Thus, Applicant respectfully submits that the Jackson *et al.* disclosure does not anticipate the pending claims. Accordingly, it is respectfully submitted that the burden has shifted back to the Examiner and withdrawal of the §102 rejection is respectfully requested.

§103 Rejection of the Claims

Claims 2-8, 12, 14-29-36 were rejected under 35 U.S.C. 103(a) as allegedly obvious over Jackson *et al.* (U.S. Patent No. 4,741,944). This rejection is respectfully traversed.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. M.P.E.P. §2142.

As substantially discussed above, the material of Jackson *et al.* does not meet the limitations of the claimed invention since the disclosure fails to disclose the composite elastic material's density and cup crush values. It is respectfully submitted that a *prima facie* case of obviousness has not been established because the Jackson *et al.* disclosure does not teach or suggest all the limitations of the claimed invention.

In addition, there is no teaching or suggestion in the Jackson *et al.* disclosure to modify the non-woven web disclosed by reducing the cup crush values to provide a soft material as in the claimed invention. The Jackson material is designed to reduce the amount of solution add-on and deliver reliable dispensing (see column 12-13). A person of ordinary skill in the art would not have a reasonable expectation of success that the composite of the present invention would be achieved by modifying the disclosure of Jackson *et al.* Thus, Applicant respectfully submits that the claimed wet wipes using the composite elastic material having a cup crush of less than about 120 g per cm and the cup crush to density ratio of less than about 1579 cm² and greater than about 950 cm² would not be obvious in view of the Jackson *et al.* disclosure.

Claims 9-11 were rejected under 35 USC § 103(a) as allegedly being unpatentable over Jackson *et al.* in view of Sabee (U.S. Patent No. 5,200,246). The Examiner alleges that one of ordinary skill in the art would be motivated to combine the disclosure of multilayer material in Jackson with the use of parallel elastic fibers disclosed in Sabee. This rejection is respectfully traversed.

The requirements for a *prima facie* case of obviousness are stated above. It is respectfully submitted, that there is no suggestion or motivation in the combined disclosures of Jackson *et al.* or Sabee that would provide a person skilled in the art with a reasonable expectation that the composite material of Jackson *et al.* would be altered such that it would meet the limitations of the present claims. Sabee discloses the formation of an elastic web by depositing a melt blown stream onto both sides of stabilized continuous filaments and that it is the deposition on both sides of the filaments and subsequent encasement of the filaments in the meltblown fiber matrix that results in the reduced stiffness, drape and hand (see column 2, lines 52-68). However, Sabee fails to disclose any data to explain the assertion that its stabilized continuous filament system has reduced stiffness. Thus, Sabee fails to provide any evidence that

reduced stiffness equates to increased softness. Furthermore, there is no expectation of success based on Sabee that forming the melt blown layer on only one side of the stabilized filaments, as they rest on a forming fabric, with little to no entanglement would yield an elastic material as described in the present invention. Accordingly, neither Jackson *et al.* nor Sabee, taken alone or in combination, teach or suggest the composite elastic material of the claimed invention. Therefore, withdrawal of the §103 rejection of the claims is respectfully requested.

Claim 13 was rejected under 35 USC § 103(a) as allegedly being unpatentable over Jackson *et al.* in view of Georger *et al.* (U.S. Patent No. 5,508,102). The Examiner alleges that that one of ordinary skill in the art, at the time the invention was made, would be motivated to combine the disclosures of Jackson *et al.* and Georger *et al.* to replace the non-elastic webs of Jackson *et al.* with the matrix of polyethylene meltblown fibers and fibrous pulp fibers to improve the abrasion resistance of the resulting elastic composite. This rejection is respectfully traversed.

Georger *et al.* discloses an abrasion resistant fibrous nonwoven material composed of fabric designed to produce an abrasion resistant material with high polymer content at the surface. Applicant respectfully submits that there is no teaching or suggestion to combine the disclosure of Jackson with the disclosure of Georger *et al.* to obtain the claimed invention. The process conditions required to produce the abrasion resistant material disclosed in Georger *et al.* would result in a stiff a stiff and abrasive composite elastic material (*e.g.*, the gatherable layer). The elastic materials of the present invention are produced to provide the cloth-like properties of the claimed invention.

Further, there must be a reasonable expectation of success that the combination of the cited disclosures, a high abrasion resistant non-woven web, of Georger *et al.*, with the polymeric web of Jackson *et al.* would provide the composite elastic material having and/or the wet wipes having the recited claim limitations. A person having ordinary skill in the art would not have a reasonable expectation that a composite elastic material prepared according to the combined

disclosures of Georger *et al.* and Jackson *et al.* would provide a soft and flexible wet wipe product that could meet the limitations of the pending claims. It is respectfully submitted that the wet-wipes using a composite elastic material in the claimed invention are not obvious over the combined disclosures of Jackson *et al.* and Georger *et al.* Accordingly, withdrawal of this rejection is respectfully requested.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6968 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743

Respectfully submitted,

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Date

April 2, 2004

By

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 2 day of April, 2004.

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